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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/767,131

Filing Date: January 29, 2004

Appellant(s): JONES, WALTER

Gene S. Winter (28,352)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/29/09 appealing from the Office action mailed 11/02/09.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

A Notice of Appeal and an Appeal Brief were filed on April 9, 2009 in connection with U.S. Patent Application No. 11/951,786. U.S. Patent Application No. 11/951,786 is a continuation of U.S. Patent Application No. 11/609,369, which is a continuation of U.S. Patent Application No. 11/074,091, now US Patent No. 7,178,470, which is a continuation-in-part of the application being appealed herein. As of the filing hereof, no decisions have been issued in connection with the related appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,095,300	RUBEN	6-1978
5,452,729	BERGSBAKEN et al	9-1995
5,778,802	HAIRSTON et al	7-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 4-6, 9-10, 13, 14, 20-23, 29, 30, 32, 33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bergsbaken et al in view of Ruben. The patent to Bergsbaken et al teaches structure substantially as claimed including a cover(10), made of a non woven material (columns 3, lines 63-67, column 4, lines 1-13, The use of nonwovens, films, polyesters would have included the use of vinyls), folds and side drops, connection structure including adhesives, bonding (column 4, lines 46-55) the only difference being that the connection structure is a separate piece of material. However, the patent to Ruben teaches the use of providing a folded cover with attaching structure as a unitary one piece member. It would have been obvious at the time of the invention to modify the structure of Bergsbaken et al to include a cover of a unitary construction, as taught by Ruben since such structures are conventional alternative structures used in the same intended purpose, and would have been reasonably predictable, thereby providing structure as claimed. The methods would have been obvious in view of the structures. It is noted that Bergsbaken et al teaches the use of permanent joining through conventional structures including taping, sewing, gluing, heat seaming, ultra-sonic bonding. It is repeated that with respect to the amendments to the claims, it is unclear how the expression "where the free edges of the plurality of side drops and the plurality of pre- fitted corners together define a generally polygonal contour having a shape and dimension substantially identical to a shape and dimensions of the generally polygonal contour of the top cover" define structure other than that of the references used and therefore the preceding rejections are again made.

Appellant discusses the shape and dimensions causing the film to be fitted about the sides of a tabletop to hold the cover. It is noted here that a combination **IS NOT** claimed.

Claims 15-19, 24-28, 31 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bergsbaken et al in view of Ruben as applied to the claims above, and further in view of Hairston et al. The patent to Bergsbaken et al in view of Ruben teaches structure substantially as claimed as discussed above including a table cover, the only difference being that a skirt is not attached to the cover. However, the patent to Hairston et al teaches the use of providing a skirt on a cover to be old. It would have been obvious and well within the level of ordinary skill in the art at the time of the invention was made to modify the structure of Bergsbaken et al in view of Ruben to include a skirt, as taught by Hairston et al since such structure is used in the same intended purpose and would have been a predictable result, thereby providing structure as claimed. It is repeated the use of attaching structures that are again well known and commercially available, such as, adhesives, stitching, heat sensitive adhesives, tacks, staples, pins would have been obvious and well within the level of ordinary skill in the art.

(10) Response to Argument

In response to appellant's remarks that all the independent claims include the limitations that require the table cover to be monolithic and consists essentially of a single piece of thin vinyl and that the modification to the Bergsbaken et al reference

would render the unsatisfactory for it's intended use, note the following. The proposed modification of Bergsbaken et al in view of Ruben provides the structure as claimed. Such modification would not render the cover of Bergsbaken unsatisfactory for it's intended use. Such a modification would allow for Bergsbaken to perform as intended and claimed as a cover, whether draped over a table structure as in figure 7 of Bergsbaken et al or over an object placed thereon. In either case the top cover provides a contour and periphery in which the portions of the monolithic cover that "drops" from the sides are identical to the shape and dimensions of the top cover at the peripheral sides of a top cover. It is noted here, that a combination of a cover and table **IS NOT** claimed.

In response to appellant's remarks that the modification of Bergsbaken et al by Ruben would not be obvious on the interior corner of Bergsbaken et al, note the following. The modification of Bergsbaken et al to include alternative folded corners is simply a use of a known structure, further such structures routinely used in folding corners of sheets, wrapping paper. To use such well known structure as an alternative corner structure is considered to be obvious and a reasonably predictable result. Again, only a top cover structure is claimed with side drops that are folded orthogonal to the top cover, such drops being identical in shape to the periphery of the top cover. The reference to Bergsbaken et al in view of Ruben provides such.

In response to appellant's remarks that the cover would not "grip " the table structure, not the following. Firstly, it is noted again that a combination has not been

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claimed. Secondly, the claims do not include any language or limitation that would require "gripping".

In conclusion, the rejection of the claims by the references include structure as claimed able to function as intended. Further, appellant argues limitations, such as a providing a "grip" that are not in the claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jose V. Chen/

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Conferees:

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